

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

EDDIE LEE THOMPSON #241541,

Petitioner,

v.

Case No. 2:01-cv-94
HON. ROBERT HOLMES BELL

TERRY SHERMAN,

Respondent.

ORDER DENYING CERTIFICATE OF APPEALABILITY

This was a habeas corpus action prosecuted by a state prisoner pursuant to 28 U.S.C. § 2254. By order entered March 28, 2007, this court denied Petitioner's motion for reconsideration. Petitioner has now filed an appeal to this order (docket #36). The issue currently before the court is whether Petitioner is entitled to a certificate of appealability.

Under 28 U.S.C. § 2253(c)(2), the Court must determine whether a certificate of appealability should be granted. A certificate should issue if Petitioner has demonstrated a "substantial showing of a denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The Sixth Circuit Court of Appeals has disapproved issuance of blanket denials of a certificate of appealability. *Murphy v. Ohio*, 263 F.3d 466 (6th Cir. 2001). Rather, the district court must "engage in a reasoned assessment of each claim" to determine whether a certificate is warranted. *Id.* Each issue must be considered under the standards set forth by the Supreme Court in *Slack v. McDaniel*, 529 U.S. 473

(2000). *Murphy*, 263 F.3d 466. Consequently, this Court has examined each of Petitioner's claims under the *Slack* standard.

This Court denied Petitioner's motion for reconsideration on the procedural grounds that it was untimely pursuant to both Rule 59(e) and Rule 60(b) of the Federal Rules of Civil Procedure. Under *Slack*, 529 U.S. at 484, when a habeas petition is denied on procedural grounds, a certificate of appealability may issue only "when the prisoner shows, at least, [1] that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and [2] that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Both showings must be made to warrant the grant of a certificate. *Id.* The Court finds that reasonable jurists could not debate that this Court correctly denied Petitioner's motion for reconsideration as being untimely. "Where a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the Petitioner should be allowed to proceed further." *Id.* Therefore, the Court denies Petitioner a certificate of appealability.

Date: July 10, 2007

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
CHIEF UNITED STATES DISTRICT JUDGE